

**Before the
Federal Communications Commission
Washington, DC 20554**

FCC 14M-22
10058

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-IH-1751
MOBILE, LLC	)	FRN: 0013587779
)	
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
	)	Application File Nos.
Applicant for Modification of Various	)	0004030479, 0004144435,
Authorizations in the Wireless Radio Services	)	0004193028, 0004193328,
	)	0004354053, 0004309872,
Applicant with ENCANA OIL AND GAS (USA),	)	0004310060, 0004314903,
INC.; DUQUESNE LIGHT COMPANY, DCP	)	0004315013, 0004430505,
MIDSTREAM, LP; JACKSON COUNTY	)	0004417199, 0004419431,
RURAL MEMBERSHIP ELECTRIC	)	0004422320, 0004422329,
COOPERATIVE; PUGET SOUND ENERGY,	)	0004507921, 0004153701,
INC.; ENBRIDGE ENERGY COMPANY,	)	0004526264, and 0004604962
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE-MID CONTINENT, LLC;)	
AND SOUTHERN CALIFORNIA REGIONAL)	
RAIL AUTHORITY)	
)	
For Commission Consent to the Assignment of)	
Various Authorizations in the Wireless Radio)	
Service)	

ORDER

Issued: July 15, 2014

Released: July 15, 2014

On June 17, 2014, the Presiding Judge issued *Memorandum Opinion and Order*, FCC 14M-18, granting summary decision on the timely construction aspect of Issue G for 16 site-based licensed facilities but denying summary decision on the question of permanent discontinuance for those same facilities.

The Presiding Judge also rejected (1) a Limited Joint Stipulation Concerning Issue G Licenses submitted by the Enforcement Bureau (“Bureau”) and Maritime Communications/Land Mobile, LLC (“Maritime”) filed on December 2, 2013, in which Maritime had agreed to delete 73 licensed facilities;¹ and (2) a Limited Joint Stipulation filed on May 31, 2012, that stipulated to the deletion of 80 additional licensed facilities,² on which the Presiding Judge had previously relied. Accordingly, he reconsidered his earlier ruling that those 80 licensed facilities were moot with regard to Issue G.³

Thereafter, on June 24, 2014, the Bureau filed a motion requesting that the Presiding Judge re-open discovery so that it may seek additional discovery on (1) whether the 80 licensed facilities that were subject of the May 31, 2012, Limited Joint Stipulation of Maritime and the Bureau were timely constructed and/or permanently discontinued;⁴ (2) nature of the discontinuance and whether operations will resume at each of the 16 licensed facilities that were the subject of the summary decision motion;⁵ and (3) nature of the discontinuance and whether operations will resume at the 73 licensed facilities identified in the December 2, 2013, Limited Joint Stipulation.⁶ For the reasons stated below, the Bureau’s motion to re-open the discovery period is partially granted.

With regard to the 80 licensed facilities that were the subject of the May 31, 2012, Limited Joint Stipulation, the Presiding Judge acknowledges that the Bureau relied on the joint stipulation, which stipulated to the voluntarily deletion of 80 licensed facilities, and therefore the Bureau “[d]id not continue to pursue discovery on either the timely construction or the operational status of these 80 facilities after May 31, 2012.”⁷ The Bureau’s reliance on that stipulation was reasonable and further discovery is needed as to those facilities. Therefore, the Presiding Judge grants the Bureau’s request and re-opens discovery for all parties, but only for a period of 30 calendar days, in order to obtain evidence of the timely construction and permanent discontinuance of the 80 licensed facilities.

However, additional discovery on the 16 licensed facilities that were the subject of the summary decision motion, and the 73 licensed facilities identified in the December 2, 2013, Limited Joint Stipulation are denied. While the Bureau states that there is no evidence of Maritime taking steps to resume operations at its licensed facilities of record,⁸ it fails to provide a satisfactory explanation as to why this evidence was not sought during the earlier discovery period in this proceeding. Indeed, in a prolonged proceeding where one of the major issues, set in April 2011, is to decide whether a licensed facility was permanently discontinued, it is bewildering that the Bureau has not sought timely discovery on the discontinuance of particular stations. After two failed attempts at summary resolution of Issue G, it is time to move forward. The Bureau’s untimely request to re-open discovery on these licensed facilities must be denied.

¹ *Memorandum Opinion and Order*, FCC 14M-18 at 23-26 ¶¶ 66-72 (ALJ, rel. June 17, 2014).

² *Id.* at 25 ¶ 71.

³ *Id.* (citing *Memorandum Opinion and Order*, FCC 14M-16 at 9 ¶ 21, 13 ¶¶ 31-33 (Aug. 13, 2014)).

⁴ Enforcement Bureau’s Motion to Re-Open the Discovery Period at 3-4 ¶ 3 (filed June 24, 2014).

⁵ *Id.* at 2-3 ¶ 2.

⁶ *Id.* at 4-5 ¶ 4.

⁷ *Id.* at 4 ¶ 3.

⁸ *Id.* at 3 ¶ 2.

Nonetheless, inasmuch as discovery will be re-opened on the timely construction and permanent discontinuance issues relating to 80 licensed facilities, and no objection to further discovery has been raised by any party, additional discovery will be permitted during the 30 day discovery period on whether the discontinuance of any licensed facility at issue in this proceeding is permanent. It is up to the discovering parties to determine the most effective use of discovery time. The Presiding Judge will only reconsider granting further time for discovery beyond 30 days if (1) the Bureau satisfactorily explains why evidence relating to discontinuance was not sought during the discovery period and why such circumstances now warrant additional time for discovery that by now should be completed, or (2) extraordinary circumstances justify the granting of additional discovery time.

The Presiding Judge is concerned that the Bureau's motion may suggest that the additional discovery may be used to support yet another summary decision motion. The parties are cautioned that the Presiding Judge will not entertain a further motion for summary decision. As three summary decision motions have been filed and considered in this proceeding and substantial issues of fact still remain to be heard, the Presiding Judge does not see how efficiency could be served by a fourth motion.⁹ All new discovery will be limited to preparation for hearing. However, the Presiding Judge will continue to consider well-crafted stipulations that obviate the need to examine particular factual matters at hearing, but only if those stipulations are joined or agreed to by all parties actively participating in the litigation phase.

The first day of the hearing will be set approximately 45 days after the close of discovery. The litigating parties shall jointly submit a proposed calendar of prehearing procedural dates, and an estimate of hearing time. As part of trial preparations, by July 30, 2014, counsel representing Mr. Havens at trial shall have filed and served a Notice of Appearance.

RULINGS

For the foregoing reasons, **IT IS ORDERED** that the Bureau's Motion to Re-open the Discovery Period **IS GRANTED** solely with respect to the 80 licensed facilities that were subject of the May 31, 2012, Limited Joint Stipulation of Maritime and the Bureau.

IT IS FURTHER ORDERED that the parties **SHALL PROPOSE** a calendar of prehearing procedural deadlines and **ESTIMATE** the length of the hearing on or before **July 30, 2014**.

IT IS FURTHER ORDERED that counsel representing Mr. Havens at trial **SHALL FILE AND SERVE** a Notice of Appearance on or before **July 30, 2014**.

IT IS FURTHER ORDERED that all discovery on the limited issues described above **SHALL BE COMPLETED** on or before **August 15, 2014**.

⁹ See 47 C.F.R. § 1.251(f) ("The presiding officer may take any action deemed necessary to assure that summary decision procedures are not abused. He may rule in advance of a motion that the proceeding is not appropriate for summary decision, and may take such other measures as are necessary to prevent any unwarranted delay.").

IT IS FURTHER ORDERED that the deadline for good cause requests for extending discovery extensions **IS SET** for **August 15, 2014**.

IT IS FURTHER ORDERED that the hearing **IS SET** to commence on **September 30, 2014 at 10:00 am**.

FEDERAL COMMUNICATIONS COMMISSION¹⁰



Richard L. Sippel
Chief Administrative Law Judge

¹⁰ Courtesy copies of this *Order* sent by e-mail on issuance to each counsel and to Mr. Havens.